

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210870

DATE: April 22, 1983

MATTER OF: MKB Manufacturing Corp.; J.B. Electronics Corp.

DIGEST:

1. Protest is dismissed without requesting protester's comments on contracting agency report because report clearly demonstrates that matter is not reviewable by GAO.
2. Timeliness of protest is academic because, regardless of when protest was filed, GAO will not question contracting officer's nonresponsibility determination where SBA affirms determination by refusing to issue protester a certificate of competency.

MKB Manufacturing Corp. (MKB) and J.B. Electronics Corp. (J.B.) filed general protests against the failure of the Department of the Army (Army) to award a contract to J.B. under invitation for bids (IFB) No. DAAA09-82-B-0788.

The president of J.B., who is also a principal and manager of MKB, has indicated that MKB and J.B. employ the same secretary and that the secretary inadvertently sent the mailgram protest for MKB when it should have been sent for J.B. By this explanation, the MKB protest is, in effect, withdrawn. Therefore, it is not necessary for us to consider the Army's contention that MKB is not an interested party to the protest.

We dismiss the J.B. protest without requesting J.B.'s comments on the Army report. Our Bid Protest Procedures, 48 Fed. Reg. 1931 (1983) (to be codified in 4 C.F.R. § 21.3(g)), provide that protests not reviewable by our Office shall be summarily dismissed and, when the propriety of dismissal becomes clear only after information is provided by the contracting agency, shall be dismissed at that time.

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The Army contends that J.B.'s protest should be dismissed as untimely because it was not filed until more than 10 working days after J.B. was advised that the Small Business Administration (SBA) declined to issue J.B. a certificate of competency (COC) after the contracting officer determined J.B. to be nonresponsible. See 4 C.F.R. § 21.2(b)(2) (1983).

The timeliness of J.B.'s protest is academic because, regardless of when the protest was filed, our Office will not question a contracting officer's nonresponsibility determination where the SBA affirms the determination by refusing to issue a COC. Jechura's Military Equipment Company, B-209996, December 15, 1982, 82-2 CPD 539.

Harry R. Van Cleve
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Acting General Counsel